

## COMMITTEE ON BILLS ON SECOND READING

**July 16, 2002**

**6:15 PM**

Chairman Wihby called the meeting to order.

The Clerk called the roll.

Present: Aldermen Wihby, Sysyn, DeVries, Smith, Forest (late)

Messrs: R. MacKenzie, Atty. Lazos

Chairman Wihby addressed Item 3 of the agenda:

Zoning Ordinance Amendment:

“Amending the Zoning Ordinance of the City of Manchester by amending Article 10 - Off Street Parking and Loading Requirements, Section 10.03 by increasing the required stacking spaces for car wash and car care with automatic or drive-thru services from 5 to 10 stacking spaces.”

On motion of Alderman Smith, duly seconded by Alderman Sysyn, it was voted that this ordinance amendment ought to pass.

Chairman Wihby addressed Item 4 of the agenda:

Zoning Ordinance Amendments:

“Amending the Zoning Ordinance of the City of Manchester by changing the zoning district of property currently zoned R-SM (Residential Suburban Multifamily District) to B-2 (General Business District) on the west side of Brown Avenue at the intersection of Hazelton Avenue.”

“Amending the Zoning Ordinance of the City of Manchester by changing the zoning district of property currently zoned R-1B (Residential One Family District) to R-SM (Residential Suburban Multifamily District) on the east side of Brown Avenue at the intersection of

Hazelton Avenue, extending to the Londonderry Town line.”

Chairman Wihby stated I want to note that there were two other letters regarding these amendments that were handed out.

Alderman DeVries moved that the ordinance amendment ought to pass. Alderman Sysyn duly seconded the motion.

Alderman DeVries stated we have had several meetings with the direct abutters of the property and there are some conditions on the property. Would it be appropriate to enter into that conversation now or should that be done at the full Board?

Chairman Wihby replied why don't you do that at the full Board level if somebody wants to know. This is basically just on the zoning amendment. It is not really about the stipulations that they have made.

Alderman DeVries stated we are looking for it to be conditional rezoning.

Chairman Wihby asked you are.

Alderman DeVries answered yes.

Chairman Wihby stated so on top of this you are going to throw that in.

Alderman Smith stated I would like to ask Bob MacKenzie a few questions.

Chairman Wihby stated Bob we are addressing Item 4. There is a motion that it ought to pass but they also want to put stipulations on there to. Is that possible to do?

Mr. MacKenzie replied you have to be careful about conditional rezoning. There are some legal issues with that. In many cases the Board has worked out agreements with applicants. I think as you may remember when the Lahey Hitchcock Clinic was going on the hill they voluntarily put some covenants on the property that the Board was comfortable with and executed those before final action by the Board of Mayor and Aldermen.

Chairman Wihby asked so in the next couple of weeks before it comes up for a final vote...well there is a committee report tonight and that is not the final vote right.

Mr. MacKenzie answered correct it will go to the full Board.

Clerk Bernier stated that will be on August 6.

Chairman Wihby stated so up until August 6 we can wait to do that agreement.

Mr. MacKenzie replied yes and again I wasn't familiar with what the agreement was or the conditions were but that could possibly be worked out.

Chairman Wihby asked so if we don't have anything in writing and we know what they are planning we could pass this with this motion and then at the next meeting make sure that everybody has a copy of all of the conditions that were agreed to.

Alderman DeVries answered yes it is just that I do have many of the direct abutters present and they might have a spokesperson. Is it possible to have one of the...maybe the developer and one of the neighbors?

Chairman Wihby replied it is not a public hearing.

Alderman DeVries responded I understand that.

Chairman Wihby stated I don't think there is going to be anything...if you met with the abutters and...are there any abutters here knowing the stipulations that are opposed to them. Well, Alderman Smith you had questions of Bob so go ahead.

Alderman Smith stated Bob at the previous meeting we had back in April or early May it was my understanding and I thought you had talked with the State about the acquiring of land and they said they weren't interested in the whole parcel and now I see a piece of paper in front of me and that is not the situation. It is dated today. I wonder what transpired.

Mr. MacKenzie replied at the hearing the applicant did have a letter from the Commissioner of the DOT indicating that they would have certain rights to access to a portion of the property. At that hearing I had not spoken with the Commissioner or the project engineer. The only two times I have spoken with the project engineer, Bob Barry, he has indicated both times including this morning that they intent to take the larger parcel for the project. There is a smaller parcel on Hazelton Avenue of about two acres that they may do a partial taking of but they will not be able to determine how much of a taking until they get into final design. Right now they have only done a preliminary design.

Alderman Smith asked what has taken the State so long to develop this. I remember reading in the paper last year about this whole situation and no one can

move until the State does something. I am sort of embarrassed in a way because I just found out tonight that the State was going to take the whole parcel. I mean where has everybody been from the State? There has been no back and forth talk between the City and the State.

Mr. MacKenzie answered as I understand it one of main issues has been environmental issues relating to this project and that has taken several years to get to the point where they have tried to address most of the environmental concerns from a number of environmental groups. They do have a long process required by the Federal government to do environmental reviews and it is my understanding that both the fact that they need environmental clearances and also the fact that they have been trying to find the funds to actually do the project have been a hurdle.

Alderman DeVries asked, Mr. MacKenzie, the last contact that I had with Commissioner Murray with DOT indicated that there is some difficulty in taking the land without public purpose if they do not directly need it for the construction project. Had Bob Barry indicated to you today what public purpose he will be able to show being served?

Mr. MacKenzie answered he did indicate that the parcel as I think they at the staff level believed all along...a good chunk of the property will be needed for the highway itself. There are also environmental issues. They are under review by agencies such as the US Fish & Wildlife Service and I believe it was the US Fish & Wildlife Service that was basically insisting that the entire parcel be taken and that is what he indicated to me today. That they had a general agreement with the US Fish & Wildlife Service to acquire the property.

Alderman DeVries asked did he indicate to you because there have been discussions about the legalities for the parameter set-up to protect the eagles and they do not have legal value. It is a logging standard from the State of Maine and that seemed to have been the issue with them a couple of weeks ago that there were not any legal standings surrounding the eagles so has something changed in the last...

Mr. MacKenzie interjected in our discussion he did not specifically mention eagles. He said that basically for a variety of environmental issues that environmental groups were hoping to preserve the entire property.

Alderman DeVries asked excepting the two-acre parcel.

Mr. MacKenzie answered correct.

Alderman DeVries stated I am still looking to get my...maybe to ask the developer if they have copies of the constituent's conditions that they could present to this Board to start getting on record. Is it possible to have the developer enter into the conversation?

Chairman Wihby asked which one are you talking to, the attorney. Attorney Lazos do you have something to present to this Board that we can look at?

Atty. Nicholas Lazos answered I represent the King family, the owners of this particular property. My client has met with the abutters and they have worked out a list of seven possible conditions for the future development of the property, which we have agreed that we would formalize into a covenant that would be recorded in the Registry of Deeds and we are prepared to agree with the Board of Mayor and Aldermen that as a condition to the rezoning of the property that we will, in fact, record these conditions. If I may, I will give you a copy for your record.

Chairman Wihby asked so the intention is that you are going to file this before the final vote. Is that what the intention is?

Atty. Lazos answered as I understand the process, Mr. Chairman, there are actually two votes. We are quite prepared before the final vote to deliver to the Board of Mayor and Aldermen a formal declaration of covenant that will be recorded and fully signed. Does anybody have any other questions that I could address?

Alderman Gatsas asked would it also be agreeable by your client that if there is an eminent domain taking that the lesser of the value because obviously increasing residential multi-family to commercial use increases the value of the land. If there is an eminent domain taking, I don't justify sitting on this Board thinking that we should change the zoning of a parcel of land knowing that in the future there could be an eminent domain taking and it increases the value of the land. My question is would your client be amenable to including that in the deed restriction that if there is an eminent domain taking that the lesser of the value of the two pieces of property would fall into that category or whatever portion of the land is taken?

Atty. Lazos replied the answer to that, Alderman, is no. Let me explain why. I think you need to go back to the...I guess the first thing is what is the purpose of zoning? Let me take a step back so that this Committee and members of the Board understand where we have been and why we are here. Fully 15 years ago the State of NH approached Peter King, Sr. and requested that he not develop this land because the State had plans to build an access road to the Manchester Airport in the immediate future. The King family agreed at that time not to do so and at that

time the land was zoned R-3. The effect of that is that the King's patiently waited for a full 15 years being told that the taking is occurring and the bridge will be built and the project is moving forward and don't worry it will happen. If you take a look at the map of the area you will discover that the only land that is vacant in that whole area that has not been developed as residential happens to be this piece and that is because of the patience of the King family and following through with their agreement. Last year the King family came in...well what happened is last year the City of Manchester rezoned this property from R-3 to R-SM. The effect of that rezoning was that it cut the density permitted on the site in half so instead of having 350 units of apartments on this site, the City of Manchester's new zone cut that in half. So instead of having a piece of land that is worth \$5 million based on apartment development, they have a piece of land that is worth far less. The King family didn't oppose the rezoning that occurred last February because basically they believe that the highest and best use of this property once the airport access road was put in is as retail and hotel development, B-2. Last year, the King's proposed an amendment to the ordinance changing this zone to B-2. What happened is the State, through Mr. Barry's office, contacted Mr. MacKenzie and advised him that the State intended to take the whole property. At that time, we withdrew the request for the rezoning. I think you may remember that.

Subsequently, we received a public notice of the taking that was done in April of this year and in that public notice the State showed the pieces of land that were going to be taken for the airport access road. Now two things have happened since our first petition last year. The first thing that happened is because of problems with a land owner on the West side of the river in Bedford, the Coastal Lumber people and because of the location of a potential eagle nest on the West side of the river, the bridge and the access road was moved south approximately 600'. In the public notice that we received, the State showed a 75' strip along the river as being taken for eagle mitigation. That 75' along the river by the way is forested. It is the only part of this parcel that is forested. The rest is open field. We went to the public hearing and at the public hearing we asked Mr. Barry and Mr. Moore from the Right-of-Way Division whether they were taking our property for eagle mitigation and at that hearing they said no, that only the 75' along the river was being taken for eagle mitigation. That is the only environmental issue that is here, by the way. There is no other environmental issue. So what happened at that meeting is I asked the question. I wanted to know why our whole parcel was being taken for the highway bridge when, in fact, it had been moved 600 feet south and, in fact, they weren't taking it for eagle mitigation and the answer was at that time a purely technical answer. The answer was well we are showing your frontage along Brown Avenue as being limited access and they said you can petition the department to remove the limited access issue and under those circumstances we won't take all of your property. I filed a letter with the State, the DOT and the response that we received was a surprise to us. The response that we received from Commissioner Murray was that they are not taking all of the

property so my clients met with Commissioner Murray along with an engineer from TF Moran and Commissioner Murray at that meeting indicated that a very substantial part of the land north of the existing wetland on the site would be available for development and the State would give us access at the signal intersection that they are building there. So here we are. The King's 15 years later having been extremely patient are being put through the ringer frankly. We don't know why the State is bouncing back and forth. Mr. Smith, you asked the question before and we don't know why. The Commissioner is telling us that a substantial part of this land is going to be made available for development. Frankly, the development we are proposing will create a huge tax increase for the City of Manchester. The City of Manchester is getting no other tax base increase from this access road. This is the only available area of land in the area that is going to be developed in Manchester. The rest of the land that is going to be benefited is in Londonderry. The King's have waited 15 years. They have cooperated with the State. Commissioner Murray specifically asked us to master plan our site and give her information concerning our future traffic demands and everything else. At this point the King's could have developed this site as an R-3 apartment site, which would have generated traffic, children, and school demands which I don't think the neighbors would have been real happy with. We are proposing a scale back development. We are proposing to go back to the State and negotiate very hard with them to get our land and to ask the King's to, after all of these years of paying taxes, being patient and waiting for development to say don't ask the State for the highest and best use and the highest value of this property I think is a little unfair especially since if our efforts are effective the City is going to end up with a substantial tax base and substantial benefit for the project. Everyone wins here – the owner, the City and frankly the State wins because we have been cooperating with them from the very beginning. If you remember what zoning is for, zoning is intended to create a use that is appropriate for the area. Once this bridge is built, this zoning will be appropriate for the use in the area and we worked with the neighbors and we have worked with the local Aldermen in the ward and I think it is...honestly I have never heard of any other request in 25 years of practice similar so all I can tell you is from a position of fairness and from a position of being a good public citizen and cooperative with the State...

Chairman Wihby interjected you are getting long winded. Do you have another question for him, Alderman Gatsas?

Alderman Gatsas stated I was going to ask him if he answered the question but I assume he did.

Atty. Lazos replied I did. I think I said no.

Alderman Gatsas stated I would assume that if we looked at the testimony when we did a map of the entire City of rezoning that you sat in that same chair and vehemently opposed the R-3 zoning to the R-SM, the downgrade zoning. Did you object to that downgrade?

Atty. Lazos replied no they did not object.

Alderman Gatsas stated what you are asking for this Board to do is change the zoning at this time so that the State if they do take the property by eminent domain that the taxpayers in the State of New Hampshire would be paying more for that piece of property on the portion that the State is going to use. I am not looking to not change the zoning. I am saying that the zoning should go forward, however, the portion of land that is being taken by eminent domain should fall to the lower use. Now we did that at Hackett Hill. We did that when we rezoned multi-family and we asked...I believed you represented that client and they came forward because I was concerned that they could have built 400 units there and they said the most they would build was 64. So that was the zoning that we discussed at Hackett Hill, which is basically the same thing.

Atty. Lazos replied let me take a step back. First of all, the Hackett Hill situation is completely different. That was a case of the change in zoning. There was no taking involved. No one was paying any money. What happened there is a negotiation was done to allow single-family development that was appropriate as part of the project, not multi-family. In fact, the developer never intended to put multi-family there. The prior developer did but my particular client did not and I think we worked through that quite nicely. There was no issue of somebody paying more or less for that property. Now the question of whether the taxpayers of the State of New Hampshire are going to pay more money is, I think, not relevant here because this is a Federal project, which is going to have substantial Federal funding. Now if we want to get into the theoretical discussion or the discussion of should the State after promising to these people 15 years ago that they should wait should be penalized when other people who are resisting the taking and threatening lawsuits and have filed actions on the other side of the river are going to get a windfall, what you are saying is that if you cooperate you get hurt and if you work with the State you get hurt and if you work with the City you get hurt. That is not fair. We are not talking about State money. We are talking about Federal money here. The project has been funded and it is ready to go. Frankly, none of the discussions we have had with the State have revolved around the issue of value. The issues that we have with the State are how much do they realistically need to develop the project and why are they taking it. That apparently is the issue here. It is not a question of value. I think it is a red herring and I think it is quite unfair.



Chairman Wihby stated I would like to say, too, Alderman Gatsas that I myself called Carol Murray three times and she never returned my call and I left messages on what I wanted to talk to her about. She never once returned my call and that is frustrating trying to get information from a department knowing that we are going to vote on this and her not returning the call.

Alderman DeVries stated as a representative, Mr. Lazos, for the King family I realize you say that this is not an issue of fairness and finances of tax dollars or tax dollars coming out of pockets. To address Alderman Gatsas' concern in reference to the value of the land and would this rezoning potentially be increasing dramatically the value of the land, would the King family be willing to enter into restrictions so that they will not permit this land and thus greatly improve the value of the property prior to any taking by the State so it will remain raw, undeveloped, unpermitted land?

Atty. Lazos replied we have had these discussions and the answer is yes. My clients are willing to negotiate with the State on valuation based on the raw land. We have agreed that we would not submit a final application for a redevelopment of the property until after the project was designed. In all honesty, we approached the State a year ago and said let's negotiate the value and the State has declined to do that. We don't know why. It has been very frustrating but we are willing to agree that we will not submit an application for design of this site until the State is ready to fully design and determine how much of this land is going to be remaining.

Alderman DeVries asked and you are willing to go on record with this Board saying that as well.

Atty. Lazos answered I just did.

Alderman Gatsas asked, Mr. MacKenzie, what is the value of one acre of commercial land.

Mr. MacKenzie answered it varies by location.

Alderman Gatsas asked within 60%.

Mr. MacKenzie answered parcels on South Willow Street have gone upwards of \$300,000 an acre recently.

Alderman Gatsas asked what is the value of an R-SM one acre lot.

Mr. MacKenzie answered it is going to be somewhat less depending on the location and type of topography. It could be \$150,000 to \$200,000 an acre.

Alderman Gatsas asked so even on the raw land if we change the zoning from R-SM to commercial that increases the value even on raw land.

Mr. MacKenzie answered if it is a good commercial location or could be a good commercial location, it would normally be more valuable as commercial than residential, yes.

Alderman Gatsas asked so raw land, rezoning it, changes the value and increases it probably 90% of the time.

Mr. MacKenzie answered I would guess so, yes.

Alderman DeVries stated I have had many meetings with the direct abutters of this property whose lives are likely to be impacted 24/7. Those meetings have generated a lot of stipulations and conditions that have made them feel comfortable. They had the very difficult choice between allowing into their backyard...this is the property along the river, a multi-family development potentially 300 to 350 apartments or looking at a limited commercial development where they had some control over getting enhanced buffers to improve the views that they will be looking at. They have had the ability to work with the developer as to the potential design and the potential type of projects that will be going in. The immediate abutters to this property have become comfortable with this rezoning and they prefer this over the multi-family project that was their alternative in their backyard. If there are individuals...I think I have an individual in the audience and if we need to get that on record we can do that. Are there any other abutters that would like to come up and address the seven stipulations? I did pass out the copy of the seven conditions that were formulated by the direct abutters so they could see what was going on record this evening would match what they had negotiated with the developer and it is in conformance.

Chairman Wihby called for a vote on the motion that the ordinance amendments ought to pass. There being none opposed, the motion carried.

Chairman Wihby addressed Item 5 of the agenda:

Ordinance and Zoning Amendments:

“Amending Chapter 130: General Offenses of the code of Ordinances of the City of Manchester by repealing Section 130.10 Tattooing in its entirety.”

“Amending the Zoning Ordinance of the City of Manchester to include a new use group category for Tattoo Parlors, inserting changes to Table 5.10, adding supplementary regulations for tattoo parlors, and providing for location restrictions so as to prohibit such parlors within 600 feet from each other and not less than 500 feet from a Residential or Civic Zone.”

Chairman Wihby stated I asked the City Solicitor to put something together and give us some information but it doesn't look like he is here. Does anybody have a problem with tabling it until they come back with a report? What I had asked him was if he felt there was a way that we could just stop this flat or if he thought we had to put it somewhere in the City. He thought it had to go somewhere in the City and was going to draft something up. Has he talked to you, Bob?

Mr. MacKenzie replied no he hasn't.

Chairman Wihby stated he is supposed to be working with you. Is anybody opposed to tabling this until they get together and work?

On motion of Alderman Sysyn, duly seconded by Alderman Smith, it was voted to table this item.

### **TABLED ITEM**

6. Ordinance Amendment:

“Amending Section 33.012 Maintenance of Plans of the code of Ordinances of the City of Manchester by deleting language referencing maintenance of class specifications from Section (A) Responsibilities of the Human Resources Director.”

(Tabled 03/26/02)

Chairman Wihby asked what is this, Alderman Lopez and do you want this referred back to your Committee.

Alderman Lopez replied yes.

On motion of Alderman Smith, duly seconded by Alderman DeVries, it was voted to remove this item from the table.

On motion of Alderman Sysyn, duly seconded by Alderman DeVries, it was voted to refer this item back to the Human Resources Committee.

### **NEW BUSINESS**

Chairman Wihby stated we have one more item.

“Amending Sections 33.025 and 33.026 (Youth Services Director) of the Code of Ordinances of the City of Manchester.”

Chairman Wihby stated Alderman Lopez, I guess you guys voted on the class specification for the Youth Services Director, from a 26 to a 23 yesterday.

Alderman Lopez replied yes we did that and the wishes of some members of the Committee were to go from a 26 to a 23 with the understanding that the person who is temporarily holding that position as a 26 will receive that pay until such a time as the Mayor brings in a nomination. If it is her, it will be a 23 and if it is somebody else then she would stop receiving the pay.

Chairman Wihby asked is that coming up today then to suspend the rules and not send it to Bills on Second Reading. Are you trying to get that done today?

Alderman Lopez stated we would like to get it done for the simple reason that the Committee felt that since we only meet once a month that we will be here in September and October trying to solve this problem.

Chairman Wihby asked do you want to wait until it comes up at the Board meeting or do you want us to take a vote on this now and then make it a Committee report also. This came up for discussion in HR and also came up at the last meeting of the full Board. It passed the HR Committee once before and was sent back to them to look at it and they looked at it again and are basically recommending the same thing.

Alderman DeVries asked which way expedites the process.

Chairman Wihby answered it would probably be just as easy if we voted on it now and sent it to the full Board as a Committee report to go along with the HR Committee report.

On motion of Alderman DeVries, duly seconded by Alderman Sysyn, it was voted that the ordinance amendment ought to pass.

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There being no further business, on motion of Alderman Smith, duly seconded by Alderman Forest, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee